

**ORDINANCE NO. 11-3000**

**AN ORDINANCE OF THE CITY OF BEDFORD AMENDING CHAPTER 110 OF THE CITY OF BEDFORD CODE OF ORDINANCES, ARTICLE II, "HOTEL OCCUPANCY TAX," BY IMPOSING A HOTEL OCCUPANCY TAX AND PROVIDING FOR THE ADMINISTRATION AND COLLECTION OF SUCH TAX; ESTABLISHING A PENALTY; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEDFORD, TEXAS:**

**SECTION 1. That the City of Bedford Code of Ordinances is Chapter 110, "Taxation," Article II, "Hotel Occupancy Tax," is hereby amended and shall read in its entirety as follows:**

**A. Definitions**

The following words, terms and phrases shall, for the purposes of this ordinance and except where the context clearly indicates a different meaning, be defined as follows:

**City.** The City of Bedford and, variously, the incorporated territory of Bedford, Texas, wherein the city government is empowered to impose this tax by Chapter 351 of the Texas Tax Code.

**Finance Director.** To be used interchangeably as the duly appointed Director of Administrative Services or his designee.

**Due date.** The twentieth (20th) day after the close of the monthly period for which the tax is to be computed.

**Folio.** Primary documentation produced by a hotel that demonstrates interaction between the lodging provider and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable tax, and the means of payment.

**Guest.** Any person who, for a consideration, uses, possesses, or has the right to use or possess any guest room in a hotel under any lease, concession, permit, right of access, license, contract, or agreement.

**Guest room.** A room in a hotel occupied, or intended, arranged, or designed for sleeping, and rented for more than two dollars (\$2.00) per day.

**Hotel.** Any structure or any portion of a structure, including any hotel, motel, inn, tourist house, tourist court, lodging house, rooming house, or bed and breakfast, containing guest rooms and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. The meaning does not include any hospital, sanitarium, nursing home, or the dormitory facilities at an institution of higher education.

**Lodging Provider.** Any person operating a hotel in the city, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person operating such hotel and who is subject to collecting and remitting the tax imposed upon guests.

**Monthly period.** The calendar months of any year.

**Occupancy.** The use or possession, or the right to the use or possession of any guest room in a hotel.

**Permanent resident.** Any guest who, as of a given date, has or shall have occupied or has or shall have established the right of occupancy to any guest room in a hotel for more than thirty (30) continuous days.

**Person.** Any individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number.

**Rent.** The consideration charged for the occupancy of a guest room, valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the lodging provider to the guest, without any deduction therefrom whatsoever.

**Tax.** The tax on occupants imposed by this ordinance, as provided for by Chapter 351 of the Texas Tax Code.

#### **B. Tax Rate**

There shall be paid by the guest for every occupancy of a guest room in the city a tax at the rate of SEVEN percent (7%) of the amount of rent unless an exception is provided under section D.

#### **C. Collection of Tax By Lodging Provider**

Every lodging provider renting guest rooms in the city shall collect a tax of SEVEN percent (7%) on the amount of rent from the guest unless an exception is provided under section D. The lodging provider shall provide a receipt to each guest, which receipt shall reflect both the amount of rent and the amounts of this and other tax applicable. This tax shall be due from the guest, and shall be collected by the lodging provider at the same time that the rent is collected. The lodging provider shall be liable to the city for the full amount of tax received or collected, or any consideration received that is represented to be tax, and shall hold such in trust for the city. Furthermore, the lodging provider shall be liable for any amount of tax that it fails to collect appropriately.

#### **D. Exceptions**

No tax shall be collected from a guest after becoming a permanent resident. A guest becomes a permanent resident either after thirty (30) continuous days' occupancy, or upon notifying the lodging provider in writing of his intention to occupy a guest room for longer than thirty (30) continuous days and then proceeding to actually occupy the guest room for such period. A guest who would express intent, but fails to stay thirty (30) continuous days, is not a permanent resident and is not excepted from the tax. However, a guest who expresses intent and does stay is excepted from the tax as of the date he notified the lodging provider of his intention.

No tax shall be imposed hereunder upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earning of which inures to the benefit of any private shareholder or individual.

No tax shall be collected from the federal government nor an officer or employee of said government when traveling on government business and presenting official identification. The American Red Cross, federally chartered credit unions and the regional home loan banks are recognized as instrumentalities of the federal government.

No tax shall be collected from the following Texas quasi-governmental entities formed under the Texas Local Government, and Health and Safety Codes, nor an officer or employee of any thereof when presenting a Hotel Occupancy Tax Exemption Certificate: public facility corporations, housing authorities, housing finance corporations, and health facilities development corporations.

No tax shall be collected from electric cooperatives formed under Chapter 161 of the Texas Utilities Code, nor telephone cooperatives formed under Chapter 162, nor an officer or employee of either thereof when presenting a Hotel Occupancy Tax Exemption Certificate.

No tax shall be collected from a State of Texas officer or employee when presenting a photo identification card or other documentation that indicates that the bearer is exempt from paying hotel occupancy tax.

No tax shall be collected from a foreign diplomat when presenting a tax exemption card issued by the United States Department of State.

**E. Registration of Lodging Provider, form and contents, execution, certificate of authority**

Every person engaging or about to engage in business as a lodging provider in the city shall immediately register with the finance director on a form provided by said official. Persons engaged in such business must so register not later than thirty (30) days after the date that this ordinance becomes effective. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place(s) of business and such other information which would facilitate the administration of the tax as prescribed by the finance director. The registration shall be signed by the owner if a natural person in case of ownership by an association or partnership, by a member or partnering case of ownership by a corporation, by an officer. The finance director shall, after such registration, issue without charge a certificate of authority to each lodging provider to collect the tax from the occupant. A separate registration shall be required for each place of business of a lodging provider. Each certificate shall state the name and location of the business to which it is applicable.

**F. Determination generally, returns, payments**

1. Due date of taxes. All amounts of such tax shall be due and payable to the finance director monthly on or before the twentieth (20th) day of the month next succeeding the respective monthly period. The tax shall become delinquent for any monthly period after the twentieth (20th) day of the succeeding month in which it remains unpaid.

2. **Penalty for failure to pay tax by due date.** A lodging provider who fails to make any return or to pay the amount of tax as prescribed, shall be assessed a specific penalty to be added to the tax in the amount of fifteen percent (15%).
3. **Acceptance of delinquent return and remittance without imposing penalty, authority, requirements.** If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the governing authority of the city by affidavit attached to the return, and remittance is made within ten (10) days of the due date, such return may be accepted exclusive of penalty.
4. **Waiving of penalty.** Only the governing authority of the city may waive the penalty prescribed.
5. **Return, remittance, time of filing, lodging providers required to file, contents.** On or before the twentieth (20th) day of the month succeeding each monthly period, a return for the preceding monthly period together with appropriate remittance shall be filed with the finance director, including a copy of the return that is provided to the State for that same monthly period. The return shall report the gross rent, taxable rent, and non-taxable rent earned, the amount of tax collected or otherwise due for the period, and such other information as may be required by the finance director.
6. **Extension of time of filing, authority, requirements, remittance, penalty.** The governing authority of the city may, for good cause, extend the time for making returns for not longer than thirty (30) days. No extension shall be valid unless granted in writing upon written application of the lodging provider. Such grant may not be applicable for longer period than twelve (12) consecutive months. A lodging provider granted an extension shall remit tax equaling not less than one hundred percent (100%) of the tax paid for the corresponding period of the prior fiscal year, such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty shall be charged during the extension period.
7. **Collection fee allowed lodging providers.** Lodging providers collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be one percent (1%) of the amount due, but only if the amount due was not delinquent at the time of payment.

**G. Deficiency Determination**

- 1) **Recomputation of tax, authority to make, basis of recomputation.** If the finance director is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city by any lodging provider, he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly periods.

- 2) **Penalty.** Penalty shall be assessed upon the amount of any determination, as provided by Section F.
- 3) **Notice of determination, service of.** The finance director shall give to the lodging provider written notice of his determination. The notice may be served personally or by mail if by mail, such service shall be addressed to the lodging provider at his address as it appears in the records of the city. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee, or when made by statutory overnight delivery.
- 4) **Time within which notice of deficiency determination to be mailed.** Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within four (4) years after the twentieth (20th) day of the calendar month following the monthly period for which the amount is proposed to be determined, or within four (4) years after the return is filed, whichever period should last expire.
- 5) **Appeal or protest of deficiency determination.** Within ten (10) days of being served a notice of deficiency determination, the lodging provider may contest such in writing addressed to the finance director. The lodging provider shall include such documents as he believes may present grounds for abatement of the determination. The finance director shall give written notice of his decision to the lodging provider in the same manner as provided in Section G-3). The decision of the finance director shall be deemed final unless an appeal is made in writing to the governing authority with ten (10) days of the lodging provider having been served with the finance director's decision. The governing authority shall approve or disapprove the appeal, and notify the appellant of its decision.

#### **H. Determination if No Return Made**

- 1) **Estimate of gross receipts.** If any lodging provider fails to make a return, the finance director shall make an estimate of the amount of the gross receipts of the lodging provider, or as the case may be, of the amount of total rentals in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the lodging provider failed to make the return, and shall be based upon the returns from the preceding calendar year. This estimate shall be considered "prima facie" correct. Written notice shall be given in the manner prescribed in Section G-3) and the lodging provider shall enjoy the same rights of protest as prescribed in Section G-5).
- 2) **Penalty.** Penalty shall be assessed upon the amount of any determination, as provided by Section F.

#### **I. Collection of Tax by City**

- 1) **Action for delinquent tax, time for.** At any time after any tax or any amount of tax required to be collected becomes due and payable, and at any time after the delinquency of any tax or any amount of tax required to be collected, the governing authority may bring an action in a court of competent jurisdiction in the name of the city to collect the amount delinquent together with penalty, court fees, filing fees, attorney's fees and other legal fees incident thereto. The governing authority may also seek to have the lodging provider enjoined from operating the hotel until such time

as the delinquency is paid, as well as to require forfeiture of any applicable collection fee retained by the lodging provider. .

- 2) Lodging provider selling or quitting business. If any lodging provider liable for any amount under this ordinance sells out his business or quits his business, he shall make a final return and remittance within fifteen (15) days after the date of selling or quitting the business.
- 3) Duty of successors or assignees of lodging provider to withhold tax from purchase money. If any lodging provider liable for any amount of tax, interest or penalty under this ordinance sells out his business or quits the business, his successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the finance director either a receipt reflecting full payment or a certificate stating that no amount is due.
- 4) Liability for failure to withhold. If the purchaser of a business fails to withhold from the purchase price as required, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, in accordance with chapter 351.0041 section (b) of the Tax Code..
- 5) Credit for tax or penalty paid more than once or erroneously or illegally collected. Whenever the amount of any tax or penalty has been paid more than once, or has been erroneously or illegally collected or received by the city, it may be refunded by the governing authority. If the lodging provider or person determines that he has overpaid or paid more than once, which fact has not been determined by the finance director, such person shall have four (4) years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claimant may request a hearing before the governing authority at which the claim and any other information available will be considered. The governing authority shall approve or disapprove the claim, and notify the claimant of its action.

**J. Administration of Ordinance, Recordkeeping**

- 1) Authority of finance director. The finance director shall administer and enforce the provisions of this ordinance for the collection of the tax.
- 2) Records required from lodging providers, etc., form. Every lodging provider renting guest rooms in the city shall preserve, for a minimum of four (4) years, all folios, receipts, certificates of exemption and such other documents as the finance director may prescribe, and in such form as he may require. Said records shall at all times be available for examination within the city.
- 3) Examination of records, audits. The finance director or any person authorized in writing by him may examine the books, papers, records, financial reports, equipment and other facilities of any lodging provider renting guest rooms and any lodging provider liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the lodging provider, to ascertain and determine the amount required to be paid. Such examination shall be conducted at the place of lodging provision, unless the finance director shall authorize another place within the city. In the event that the Tax has been delinquent for at least (2)

complete fiscal quarters, the reasonable cost of the examination may be assessed against the lodging provider.

- 4) Authority to require reports, contents. In administration of the provisions of this ordinance, the finance director may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of guest rooms which are subject to the tax. The reports shall be filed with the finance director when required by said official, and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis for exemption, or such other information as the finance director may prescribe.

#### **K. Violations**

In addition to all available remedies at law or in equity, any lodging provider who fails, neglects or refuses to collect the tax as provided by Section C shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00). Any lodging provider who fails or refuses to make any return as provided by Section F, to keep adequate records or to open them for inspection by the city, or to furnish other data reasonably requested by the governing authority shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00). Any lodging provider who makes a false or fraudulent return with intent to evade the tax shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00). Each and every day during any portion of which any violation is committed, continued or permitted, shall constitute a separate offense and shall be punished accordingly.

**SECTION 2.** That City of Bedford Ordinance Number 2136, as amended, is hereby repealed. This Ordinance shall be and is hereby declared to be cumulative of all other Ordinances of the City of Bedford, and this Ordinance shall not operate to repeal or affect the Code of Ordinances of the City of Bedford or any Ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such Code or Ordinance are hereby repealed.

**SECTION 3.** If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portion of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 4.** This ordinance and the tax levied hereby shall become effective on the first (1st) day of the second (2nd) month following its adoption.

**PRESENTED AND PASSED** on this 14th day of June 2011, by a vote of 7 ayes, 0 nays and 0 abstentions, at a regular meeting of the City Council of the City of Bedford, Texas.

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**Jim Story, Mayor**

**ATTEST:**

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**Michael Wells, City Secretary**

**APPROVED AS TO FORM:**

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**Stan Lowry, City Attorney**